

## RACING AND GAMING COMMISSION[491]

### Notice of Intended Action

#### **Proposing rule making related to updates to racing and gaming rules and providing an opportunity for public comment**

The Racing and Gaming Commission hereby proposes to amend Chapter 3, “Fair Information Practices,” Chapter 5, “Track, Gambling Structure, and Excursion Gambling Boat Licensees’ Responsibilities,” Chapter 6, “Occupational and Vendor Licensing,” Chapter 7, “Greyhound Racing,” Chapter 8, “Wagering, Simulcasting and Advance Deposit Wagering,” Chapter 10, “Thoroughbred and Quarter Horse Racing,” Chapter 11, “Gambling Games,” and Chapter 12, “Accounting and Cash Control,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 99D.7 and 99F.4.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 99D and 99F and 2018 Iowa Acts, House File 2349.

#### *Purpose and Summary*

Item 1 updates a reference to the Iowa Rules of Civil Procedure.

Item 2 updates an Iowa Code reference.

Item 3 updates the rule regarding confidential records to be consistent with 2018 Iowa Acts, House File 2349, which amends Iowa Code sections 99D.7(23) and 99F.4(22).

Item 4 updates audit requirements for licensees.

Item 5 clarifies that contracts with licensed manufacturers and distributors for nongaming items are not exempt from Commission approval.

Item 6 changes the definition of wagering area.

Items 7 and 8 clarify occupational licensing requirements.

Item 9 clarifies that a person may file for a new license upon expiration of any suspension of 365 days or more.

Item 10 updates the rule to clarify the specific lease required.

Item 11 updates language to be consistent with that in Chapter 10.

Item 12 amends the definition of “minus pool.”

Item 13 clarifies payments of purses. In addition, the content of subrules 10.6(14) and 10.6(15), which are rescinded in Item 18, is incorporated into subrule 10.4(15).

Item 14 clarifies the consequences if a trainer or designee is not present for the administration of furosemide.

Item 15 clarifies the consequences of a horse’s not being in the paddock at the required time.

Item 16 clarifies the jockey suspension rule.

Item 17 clarifies Iowa-foaled horse requirements for specific races.

Item 18 is addressed with Item 13.

Item 19 changes how long positive drug test results are retained.

Item 20 updates subrule 11.5(1) to be consistent with subrule 11.7(6).

Item 21 allows for coin pusher mechanical devices.

Item 22 updates requirements for linked progressive slot machines.

Item 23 clarifies retention for card boxes and receipts for the playing cards.

### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on November 27, 2018. Comments should be directed to:

Barb Blake  
Iowa Racing and Gaming Commission  
1300 Des Moines Street  
Des Moines, Iowa 50309  
Email: [barb.blake@iowa.gov](mailto:barb.blake@iowa.gov)

### *Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 27, 2018  
9 a.m.

Commission Office, Suite 100  
1300 Des Moines Street  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **3.13(2)“g”** as follows:

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. ~~422.41~~ 1.503, the rules of evidence, the Code of Professional Responsibility, and case law.

ITEM 2. Amend paragraph **3.13(2)“i”** as follows:

*i.* Information gathered during an investigation during pendency of the investigation or information requested for inspection by the commission or a representative of the commission. (Iowa Code sections ~~99D.7(8)~~ 99D.7(9), 99D.19(3), 99F.4(6) and 99F.12(4))

ITEM 3. Adopt the following new paragraph **3.13(2)“o”**:

*o.* Names, social security numbers and any other personally identifiable information regarding persons who have voluntarily excluded themselves and are a part of the interactive Internet site maintained by the commission. (Iowa Code sections 99D.7(23) and 99F.4(22) as amended by 2018 Iowa Acts, House File 2349)

ITEM 4. Rescind rule 491—5.2(99D,99F) and adopt the following new rule in lieu thereof:

**491—5.2(99D,99F) Annual reports.** Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13.

**5.2(1)** The audit of financial transactions and condition of licensee’s operation shall include:

- a.* An internal control letter;
- b.* Documentation that the county board of supervisors selected the auditing firm;
- c.* A balance sheet;
- d.* A profit-and-loss statement pertaining to the licensee’s activities in the state, including a breakdown of expenditures and subsidies.

**5.2(2)** If the licensee’s fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar-year basis shall be included in the report.

**5.2(3)** In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

**5.2(4)** An engagement letter for the audit between the licensee and auditing firm shall be available upon request. Conditions of engagement for the audit shall include, at a minimum, the following requirements:

- a.* The auditing firm shall immediately inform the commission of any material errors, irregularities or illegal acts that come to the firm’s attention during the course of an audit.
- b.* The auditing firm shall inform the commission in writing of matters that come to the firm’s attention that represent significant deficiencies in the design or operation of the internal control structure.
- c.* Audit staff conducting the audit must have experience or training in the gaming industry.
- d.* Audit staff must perform a portion of the audit on the premises of the licensed facility.
- e.* The auditing firm agrees to respond timely to all reasonable requests of successor auditors.
- f.* The auditing firm agrees, if requested by the commission, to provide licensee management and the commission with recommendations designed to help the licensee make improvements in its internal control structure and operation, and other matters that are discovered during the audit.

**5.2(5)** Consolidated financial statements may be filed by commonly owned or operated establishments with the following conditions:

- a.* Separate financial statements are included for each individual entity licensed in Iowa.
- b.* The auditing firm must audit and issue a report on the separate financial statements that expresses an opinion for each individual entity licensed in Iowa.
- c.* Audit staff must perform a portion of the audit on the premises of each individual entity licensed in Iowa.
- d.* All other requirements in rule 491—5.2(99D,99F) are met and included for each entity licensed in Iowa unless an exception is granted in writing by the commission (or administrator).

**5.2(6)** The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; attendance; regulatory fee; total mutuel handle and taxes paid to the state, city, and county; unclaimed winnings; purses paid indicating sources;

total breakage and disbursements; and the disbursements of 1 percent of exotic wagers on three or more racing animals.

**5.2(7)** The annual audit report required by Iowa Code section 99F.13 shall include:

*a.* A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, and county endowment fund; and regulatory fees.

*b.* A report on whether material weaknesses in internal accounting control exist. A report shall be filed for each individual entity licensed in Iowa if a consolidated audit is provided.

ITEM 5. Amend subparagraph **5.4(8)“a”(1)**, introductory paragraph, as follows:

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 regardless of payment method are agreements that qualify for submission to and approval by the commission. Contracts and business arrangements with entities licensed pursuant to rule 491—11.13(99F) to obtain gambling games and implements of gambling, as defined by rule 491—11.1(99F), are exempt from submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

ITEM 6. Amend subrule 5.5(11) as follows:

**5.5(11)** *Designated wagering area.* The designated wagering area is ~~a rectangular area within a minimum of five feet from the front and from either side of a stationary wagering window or self-service wagering device, not otherwise obstructed by a wall or other barrier. The facility shall either section off or clearly delineate the floor of the area and post a sign near the area, which is visible to patrons approaching the area, denotes the wagering area and specifies that the wagering area is not accessible to persons under the age of 21. The designation applies only when the wagering window or device is open to transact wagering. A floor plan identifying the area shall be filed with the administrator for review and approval.~~ an area of a racetrack, designated by a licensee and approved by the commission, in which a licensee may receive from a person wagers of money on a horse or dog in a race selected by the person making the wagers as designated by the commission. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. Exceptions to this rule must be approved in writing by the commission.

ITEM 7. Amend paragraph **6.5(1)“k”** as follows:

*k.* A license shall be denied if an applicant is not of good repute ~~and~~ or moral character. Any evidence concerning a licensee’s current or past conduct, dealings, habits, or associations relevant to that individual’s character ~~and~~ or reputation may be considered. The commission representative shall decide what weight and effect evidence shall have in the determination of whether there is substantial evidence that the individual is not of good reputation ~~and~~ or character. Applicants who hold positions of higher responsibility may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role.

ITEM 8. Amend paragraph **6.5(2)“b”** as follows:

*b. Judgments.* Whenever any person licensed to engage in racing suffers a final judgment entered against that person in any court of competent jurisdiction within the United States, when that judgment is based wholly, or in part, upon an indebtedness incurred by that person for supplies, equipment, or services furnished in connection with racing, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended.

ITEM 9. Amend subrule 6.6(2) as follows:

**6.6(2)** Any person whose license was suspended for 365 days or more may file a new application for a license upon the expiration of the period of suspension but must satisfy all of the conditions set forth in 6.6(1) “a,” “b,” and “c” above. If a person’s license has not expired after the 365-day suspension, the person must have a hearing before a board to determine if the person has satisfied all of the conditions set forth in 6.6(1) “a,” “b,” and “c” above prior to that individual’s participating in racing or gaming.

ITEM 10. Amend paragraph 7.3(6)“b” as follows:

b. The racing secretary is responsible for maintaining a file of ~~all NGA~~ the NGA certificate, Iowa Greyhound Park lease (or appropriate substitute) and ownership papers on greyhounds racing at the meeting. The racing secretary shall inspect all papers and documents dealing with owners and trainers, partnership agreements, appointments of authorized agents, and adoption of kennel names to be sure they are accurate, complete, and up to date. The racing secretary has the authority to demand the production of any documents or other evidence in order to be satisfied as to their validity and authenticity to ensure compliance with the rules. The racing secretary shall be responsible for the care and security of the papers while the greyhounds are located on facility property. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership or lease of a greyhound filed with the racing secretary shall be available for public inspection.

ITEM 11. Amend paragraph 7.14(3)“e” as follows:

e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of ~~tests~~ a test suspicious or positive for prohibited substances, the ~~tests~~ test shall be reconfirmed; and the remaining portion of the sample, if available, preserved and protected for ~~two years~~ one year following close of meet.

ITEM 12. Amend rule 491—8.1(99D), definition of “Minus pool,” as follows:

“Minus pool” means when the total amount of money to be returned to the public exceeds what is in the pool because of the deduction of a commission and because of the rule stipulation that no mutuel tickets shall be paid at less than ~~\$1.40~~ \$1.05 for each \$1.00 wagered.

ITEM 13. Amend subrule 10.4(15) as follows:

**10.4(15) Horsemen’s bookkeeper.**

a. to c. No change.

d. Payment of purses.

(1) and (2) No change.

(3) The horsemen’s bookkeeper shall disburse the purse of each race and all stakes, entrance money, and jockey fees, upon request, within ~~48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory~~ two race days of the conclusion of the race day for all horses that were not selected for postrace drug testing.

(4) For horses that were selected for postrace drug testing, the horsemen’s bookkeeper shall disburse the purse of such horses for all stakes, entrance money, and jockey fees, upon request, within two race days of receipt of notification that all tests with respect to such horses have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory.

(4) (5) Absent a prior request, the horsemen’s bookkeeper shall disburse moneys to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such ~~raees~~ horses that have been selected for postrace drug testing have cleared the drug testing laboratory as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

(5) (6) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen’s bookkeeper shall disburse the purse of such horses having been selected for postrace drug testing within 48 hours two race days of receipt of dismissal or a final nonappealable order disposing of such protest or appeal.

e. No change.

f. Purse money presumption. The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning the purse money.

ITEM 14. Amend subparagraph **10.5(1)“a”(6)** as follows:

(6) Being present to witness the administration of furosemide during the administration time and sign as the witness on the affidavit form. A licensed designee of the trainer may witness the administration of the furosemide and sign as the witness on the affidavit form; however, this designee may not be another practicing veterinarian or veterinary assistant. If the trainer or designee is not present or does not allow for the administration of furosemide to a horse to be run on furosemide, said horse will be placed on the steward’s list for a minimum of five days starting the day after the violation.

ITEM 15. Amend subparagraph **10.5(1)“a”(24)** as follows:

(24) Presenting the trainer’s horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered. Any horse failing to report to the paddock will be placed on the steward’s list for a minimum of five days starting the day after the violation.

ITEM 16. Amend subparagraph **10.5(2)“v”(4)** as follows:

(4) Riding suspensions of ten days or less and participating in designated races. The stewards appointed for a race meeting shall immediately, prior to the commencement of that meeting, designate the stakes, futurities, futurity trials, or other races in which a jockey will be permitted to compete, notwithstanding the fact that such jockey is under suspension for ten days or less for a careless riding infraction at the time the designated race is to be run.

1. to 3. No change.

4. A day in which a jockey participated in one designated race while on suspension shall count as a suspension day. If a jockey rides in more than one designated race on a race card while on suspension, the day shall not count as a suspension day. Each designated trial race for a stake shall be considered one race. A jockey who rides in more than one designated race shall be allowed to be named to ride other races on a card, and such race card shall not count as a suspended race day.

ITEM 17. Amend paragraph **10.6(2)“n”** as follows:

~~n. Iowa-foaled horse. An Iowa-foaled horse may be entered in an Iowa-bred race without having its official jockey club registration papers stamped, but shall not compete~~ n. Iowa-foaled horse. An Iowa-foaled horse shall not be entered in a race limited to Iowa-foaled horses unless the horse is registered with and the papers are stamped by the department of agriculture and land stewardship. An Iowa-foaled horse would be allowed to run in an open race without the stamp, but would be ineligible for Iowa-bred supplement, Iowa-bred breeders awards and Iowa-bred breeders supplement.

ITEM 18. Rescind and reserve subrules **10.6(14)** and **10.6(15)**.

ITEM 19. Amend paragraph **10.7(3)“e”** as follows:

~~e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of tests a test suspicious or positive for prohibited substances, the tests test shall be reconfirmed, and the remaining portion, if available, of the sample shall be preserved and protected for two years one year following close of meet.~~

ITEM 20. Amend subrule 11.5(1) as follows:

**11.5(1)** Craps, roulette, twenty-one (blackjack), baccarat, ~~big six~~ and poker are authorized as table games. The administrator is authorized to approve multiplayer electronic devices simulating these games, subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3).

ITEM 21. Adopt the following **new** subrule 11.5(5):

**11.5(5)** Mechanical devices employing kickers or plates to direct coins, tokens or chips to fall over an edge into a payout hopper may be authorized as gambling games, subject to the following conditions:

a. All devices are subject to the requirements of rule 491—11.4(99F).

b. Devices shall accept no more than one coin, token or chip per play.

c. Tokens or chips used in devices shall have a value defined by the facility. Each assigned value must be displayed on the device. Values are subject to approval by the administrator.

d. Merchandise, coins, tokens, chips or other legal tender may be added to the device at the discretion of the facility:

(1) Anything of value added to a device must be in accordance with the approval of the device under the requirements of rule 491—11.4(99F); and

(2) Anything of value added to a device shall be documented, and documentation shall be retained in accordance with the retention requirements of 491—subrule 5.4(14).

e. Any coins, tokens or chips collected by the facility or not returned to individuals wagering on a device shall be included as gross receipts for the calculation of wagering tax on adjusted gross receipts:

(1) When a device is removed from play, coins, tokens, chips or other legal tender that were added to the device may be used to offset gross receipts for the calculation of wagering tax on adjusted gross receipts; and

(2) Merchandise or other items of value added to a device shall not be considered in the calculation of wagering tax on adjusted gross receipts.

f. Merchandise, coins, tokens, chips or other legal tender shall not be removed from a device while it remains in operation, except as winnings to an individual from a wager, or as the result of internal mechanisms of the device for collecting revenue, approved in accordance with rule 491—11.4(99F).

g. Anything of value in the machine shall not be tampered with or adjusted while a device remains in operation, except as required to return a malfunctioning device to operation.

ITEM 22. Amend subrule 11.12(7) as follows:

**11.12(7) *Linked machines.*** Each machine on the link shall have the same probability of winning the progressive jackpot, adjusted for the total amount wagered. The product of the odds of winning the progressive jackpot multiplied by the maximum amount wagered shall be equal for all games on the link. For the purpose of this calculation, the odds of winning the progressive jackpot, adjusted for amount wagered, multiplied by 0.05 percent shall be the maximum allowable tolerance when linked with any other game.

ITEM 23. Amend subparagraph **12.3(1)“g”(3)** as follows:

(3) The procedure and period to retain the receipt and the details of use. The period of retention must correspond with records maintained by the manufacturer of the cards in accordance with the process submitted pursuant to 491—paragraph 11.7(9)“b.”